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8 **UNITED STATES DISTRICT COURT**  
9 **SOUTHERN DISTRICT OF CALIFORNIA**

10 SHAWN ALBIN,

11 Petitioner

CASE NO. 16cv2622-WQH-WVG

ORDER

12 v.

13 CDCR,

Respondent.

14 HAYES, Judge:

15 The matters before the Court are the “Notice of Change of Address/Motion for  
16 Status of Case” (ECF No. 8) and the “Motion to Vacate” filed by Petitioner Shawn  
17 Albin (ECF No. 10).

18 **I. Background**

19 On October 19, 2016, Petitioner initiated this action by filing a Petition for Writ  
20 of Habeas Corpus pursuant to 28 U.S.C. § 2254. (ECF No. 1). Petitioner concurrently  
21 filed a Motion for Stay and Abeyance. (ECF No. 2). On November 8, 2016, this Court  
22 dismissed the Petition without prejudice and with leave to amend. The Court concluded  
23 that Petitioner had not paid the filing fee or qualified to proceed in forma pauperis and  
24 had failed to state grounds for relief. (ECF No. 4). In the Order, the Court determined  
25 that Petitioner’s Motion for Stay and Abeyance was “essentially asking for an extension  
26 of the one-year statute of limitations.” *Id.* at 2. The Order stated,

27 The Court is without jurisdiction to extend the one-year statute of  
28 limitations of 28 U.S.C. § 2244(d)(1)(A)-(D), which provides that the  
limitation period runs from the latest of:

1 (A) the date on which the judgment became  
2 final by the conclusion of direct review or the  
expiration of the time for seeking such review;

3 (B) the date on which the impediment to filing  
4 an application created by State action in  
violation of the Constitution or laws of the  
5 United States is removed, if the applicant was  
prevented from filing by such State action;

6 (C) the date on which the constitutional right  
7 asserted was initially recognized by the  
Supreme Court, if the right has been newly  
8 recognized by the Supreme Court and made  
retroactively applicable to cases on collateral  
9 review; or

10 (D) the date on which the factual predicate of  
11 the claim or claims presented could have been  
discovered through the exercise of due  
diligence.

12 28 U.S.C. § 2244(d)(1)(A)-(D) (2008).

13 The statute of limitations does not run while a properly filed state  
14 habeas corpus petition is pending. 28 U.S.C. § 2244(d)(2); *see Nino v.*  
15 *Galaza*, 183 F.3d 1003, 1006 (9th Cir. 1999). *But see Artuz v. Bennett*,  
16 531 U.S. 4, 8 (2000) (holding that “an application is ‘properly filed’ when  
its delivery and acceptance [by the appropriate court officer for placement  
17 into the record] are in compliance with the applicable laws and rules  
governing filings.”). However, absent some other basis for tolling, the  
statute of limitations does run while a federal habeas petition is pending.  
*Duncan v. Walker*, 533 U.S. 167, 181-82 (2001).

18 *Id.* at 2-3. The Court further concluded that the Motion for Stay and Abeyance failed  
19 to satisfy the *Rhines* requirements. *See Rhines v. Webber*, 544 U.S. 269, 277-78 (2005).

20 The Order stated,

21 If Petitioner wishes to proceed with this case, he must, no later than  
22 February 13, 2017: (1) pay the \$5.00 filing fee OR submit adequate proof  
of his inability to pay the fee; AND (2) file First Amended Petition that  
23 adequately states grounds for relief. . . . Petitioner may resubmit a motion  
for stay with any amended petition. Petitioner is advised that in his motion  
24 for stay he must establish how he satisfies the *Rhines* requirements.

25 (ECF No. 4 at 3).

26 After Petitioner filed a motion for leave to proceed in forma pauperis, the  
27 Court granted Petitioner leave to proceed in forma pauperis. (ECF No. 6). The Court  
28 stated, “[P]ursuant to its November 8, 2016 Order, the case remains closed. In order to

1 have it reopened, Petitioner must submit a First Amended Petition no later than  
2 February 13, 2017.” *Id.* at 2.

### 3 **II. Motion for Status of Case**

4 On March 16, 2017, Petitioner filed a “Notice for Change of Address/Motion for  
5 Status of Case.” (ECF No. 8). The motion notifies the Court that Petitioner has been  
6 transferred and requests that the Court take note of his new address. *Id.* at 1. Petitioner  
7 states that he “is having difficulties obtaining his property which contains all of his  
8 legal materials.” *Id.* at 2. Petitioner contends that prison officials are preventing  
9 Petitioner from receiving his court documents and “are restricting Petitioner’s access  
10 to the courts by way of denying him access to his legal court documents.” *Id.*  
11 Petitioner asks the Court if “any rulings [have] been rendered in this matter and sent to  
12 where petitioner was previously located.” *Id.* at 3. Petitioner requests “a printout of the  
13 current docket in this matter and any court orders which may have been rendered.” *Id.*

### 14 **III. Motion to Vacate**

15 On March 11, 2017, Petitioner filed a “Motion to Vacate.” (ECF No. 10).  
16 Petitioner requests that the Court vacate its November 8, 2016 Order and reinstate both  
17 the Petition and the Motion for Stay and Abeyance. *Id.* at 1. Petitioner contends that  
18 he did not discover that the Petition had been dismissed until March 28, 2017. *Id.* at 3.  
19 Petitioner contends that he “does not yet know enough about what position the court has  
20 taken on Petitioner’s stay and abeyance petition/motion in order to even file a First  
21 Amended Petition.” *Id.* Petitioner requests that the Court vacate its November 8, 2016  
22 Order, provide Petitioner with a copy of the November 8, 2016 Order, and consider his  
23 Petition and Motion for Stay and Abeyance. *Id.* at 4.

### 24 **IV. Ruling of the Court**


25 Initially, the Court notes that the Clerk of the Court has updated Petitioner’s  
26 address on the docket. This case is currently closed. Petitioner has not complied with  
27 this Court’s previous Orders. Petitioner has not filed a First Amended Petition.  
28 Accordingly, Petitioner’s case remains closed.

1 The Motion for Status of Case is GRANTED. (ECF No. 8). The Clerk shall send  
2 to Petitioner at his new address: (1) a copy of the docket; (2) a copy of all Orders issued  
3 in the case, and; (3) a blank Southern District of California amended petition form.

4 The Motion to Vacate the Court's Order on November 8, 2016 is DENIED.  
5 (ECF No. 10).

6 The Court grants Petitioner an extension of time to comply with the Court's prior  
7 Orders. To have this case reopened, Petitioner must, no later than Friday, July 7, 2017,  
8 provide the Court with a first amended petition which cures the defects of the Petition  
9 identified in this Court's previous Orders. Petitioner may resubmit a motion for stay  
10 with any amended petition. Petitioner is cautioned that this Order does not extend the  
11 otherwise applicable one-year statute of limitations period provided in 28 U.S.C. §  
12 2244(d)(1).

13 DATED: April 25, 2017

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15 **WILLIAM Q. HAYES**  
16 United States District Judge  
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